

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

Case No. 02-CR-81145  
04-CV-72820

vs.

MICHAEL G. PATTERSON  
Defendant.

HONORABLE BERNARD A. FRIEDMAN  
HONORABLE STEVEN D. PEPE

**ORDER VACATING FEE ASSESSMENT PORTION OF  
ORDER GRANTING *IN FORMA PAUPERIS* STATUS (Dkt. # 28)**

Defendant requested and was granted permission to proceed *in forma pauperis* (IFP) on the appeal of the decision regarding his motion to vacate. The order granting IFP status instructed that, pursuant to 28 U.S.C. §1915(a)(1) (PLRA), Defendant would still be required to pay the appeal fee. Yet, this was an oversight as the PLRA does not apply to motions to vacate. *See Anderson v. Singletary*, 111 F.3d 801, 803-05 (11th Cir. 1997) (holding that the PLRA's filing fee provisions do not apply in §§2254 and 2255 petitions), *Smith v. Angelone*, 111 F.3d 1126, 1129-31 (4th Cir.1997); *Anderson v. Singletary*, 111 F.3d 801 (11th Cir.1997); *United States v. Simmonds*, 111 F.3d 737, 742-45 (10th Cir.1997); *Naddi v. Hill*, 106 F.3d 275, 277 (9th Cir.1997); *United States v. Cole*, 101 F.3d 1076, 1077 (5th Cir.1996); *Santana v. United States*, 98 F.3d 752, 755-56 (3d Cir.1996); *Martin v. United States*, 96 F.3d 853, 855-56 (7th Cir.1996); *Reyes v. Keane*, 90 F.3d 676, 678 (2d Cir.1996).

Therefore, IT IS ORDERED that the portion of the previous order (Dkt. #28) assessing a fee to Defendant is VACATED. The Court Clerk shall refund to Defendant's prison trust account any and all fees collected in connection with this appeal.

Dated: November 13, 2006  
Ann Arbor, Michigan

s/Steven D. Pepe  
United States Magistrate Judge

Certificate of Service

I hereby certify that a copy of this Order was served upon petitioner and counsel of record by electronic means or U. S. Mail on November 13, 2006.

s/Alissa Greer  
Deputy Clerk